

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Joseph P. Bigus

Serial No.: 09/238,821

Filed: January 28, 1999

Group Art Unit: 3624

Confirmation No.: 5818

For: VEHICLE-BASED ORDER ENTRY AND PROCESSING
MECHANISM

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

**CERTIFICATE OF MAILING
UNDER 37 C.F.R. 1.8(a)**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on November 7, 2002.


Debra A. Peterson

**APPEAL BRIEF IN SUPPORT OF APPEAL
FROM THE PRIMARY EXAMINER TO THE BOARD OF APPEALS**

This is an appeal of a Final Rejection of claims 1-46 and 48-52 of Application Serial Number 09/238,821 filed January 28, 1999. This brief is being submitted pursuant to 37 C.F.R. 1.192. A Notice of Appeal was filed on August 8, 2002.

1. Real Party in Interest

International Business Machines Corporation is the real party in interest.

2. Related Appeals and Interferences

There are no related appeals or interferences pending with this application.

3. Status of the Claims

Appellant appeals from the rejection in the May 8, 2002 Office Action of claims 1-46 and 48-52. The claims on appeal are set forth in Appendix A.

4. Status of Amendments

No amendments were filed subsequent to the final rejection of May 8, 2002.

5. Summary of the Invention

As described generally at page 4 of the specification, the present invention relates to an order processing server. The order processing server repeatedly transmits information about available items (please refer to Figure 3 and to page 11 line 1 through page 12 line 7). When a customer device is brought within range of the transmission of the order processing server, the information about available items is automatically presented to the user (please refer to Figure 4, page 12, lines 8-14). The user is then able to select items and submit an order. Payment and vehicle identification information are included in the order (please refer to Figure 4 and to page 12, lines 22-27). When the order is received by the server, its contents are validated, and the results of the validation are transmitted to the customer device (please refer to Figure 5 and to page 13 line 19 through page 14 line 11). Orders can also be presented aurally (please see page 18, lines 7 and 8).

The present invention provides several benefits over the prior art. The repeated transmission aspect of the order processing server frees the customer device from the need to maintain location awareness. When the customer device is brought within range

of a transmission, the available items are automatically presented. When the customer device is brought within range of a different transmission, different information can be displayed. The customer device need not understand where it is located, what type of transmission it is to expect, or any particulars regarding how the transmission is to be received (e.g., frequency). Additional benefits include provision for payment and vehicle identification information as part of an order and provision for aural transmission of an order.

6. Issue

The Examiner has rejected claims 1-4, 6-13, 15-22, 24-27, 29-36, 38-46, and 48-53 under 35 U.S.C. § 103(a) as being unpatentable over Matsuda et al, U.S. Patent 5,794,116 (hereafter Matsuda). The first issue is whether the Examiner is correct in asserting that claims 1-4, 6-13, 15-22, 24-27, 29-36, 38-46, and 48-53 are obvious under 35 U.S.C. §103(a) over Matsuda.

The Examiner has rejected claims 5, 14, 23, 28, and 37 under 35 U.S.C. § 103(a) as being unpatentable over Matsuda in view of Camaisa et al, U.S. Patent 5,845,263 (hereafter Camaisa). The second issue is whether the Examiner is correct in asserting that claims 5, 14, 23, 28, and 37 are obvious under 35 U.S.C. §103(a) over Matsuda in view of Camaisa.

7. Grouping of Claims

Appellant expressly states that the rejected claims (1-46 and 48-52) do not stand or fall together. Appellant has grouped the claims on the basis of like subject matter and has organized this brief accordingly. Reasons why each claim group is separately patentable are provided below in the Argument section of this appeal brief. Claims 1-4, 9, 11-13, 18, 20-22, 24-27, 32, 34-36, 41, 43, 44-46, and 48-52 are grouped together as Claim Group I; claims 5, 14, 28, and 37 are grouped together as Claim Group II; claims 6, 10, 15, 19, 29, 33, 38, and 42 are grouped together as Claim Group III; claims 7, 8, 16,

17, 30, 31, 39, and 40 are grouped together as Claim Group IV; claim 23 is also treated separately herein.

8. Argument

Rejections under 35 U.S.C. § 103

Claim Group I (1-4, 9, 11-13, 18, 20-22, 24-27, 32, 34-36, 41, 43, 44-46, and 48-52)

The claims of this group have been finally rejected by the Examiner as being obvious under 35 U.S.C. § 103(a) over Matsuda. Appellant disagrees with the Examiner's conclusion. As noted above, an important aspect of Appellant's invention is the way in which a customer device automatically receives information about available items when in range of a server's wireless transmission, without the need of an explicit request. The advantage of this approach is that the customer device need not have an appreciation of location or communication particulars. The Matsuda reference does not teach, disclose, or suggest this behavior. The Examiner recognizes this Matsuda shortcoming, but simply asserts that it would have been obvious to modify Matsuda to achieve the claimed approach. Appellant disagrees, and points out that the Examiner has not produced a reference to support his assertion. Appellant also points out that Matsuda does not just simply fail to disclose the claimed feature, but instead discloses a wholly different approach.

Please consider that the wireless video terminal of Matsuda must 1) recognize movement from one zone into another zone, 2) explicitly configure itself to communicate in the new zone, and 3) explicitly request information from the server. Please refer to the following citation table.

Masuda Requirement	Matsuda Text	Matsuda Cite
1) recognition	“Thus, the wireless video terminal 17A recognizes that is has gone out of zone 18A”.	Column 10, lines 52 and 53.
2) configuration	“Therefore, the first receiving part 171A of the wireless video terminal 17A adjusts it receiving frequency, to be capable of receiving [in] ... zone 18B.”	Column 10, lines 61-65.
3) request	“When a user ... wants to receive video data, he ... to request the video data to [sic.] the video server 11.”	Column 8, lines 6-9.

Each of these Matsuda requirements is over and above that which is required of Appellant’s customer device. While Appellant does not wish to disparage the Matsuda reference, why isn’t such an obvious modification at least mentioned in the Matsuda reference? It is also important to note that both the Matsuda client and server would need to be modified in any attempt to match the claimed behavior.

Given that the Matsuda approach is wholly different than that of Appellant’s, and the fact that the Examiner has failed to produce a reference showing obviousness, Appellant respectfully submits that the claims of Claim Group I are not fairly held obvious under 35 U.S.C. § 103(a) over Matsuda. Appellant respectfully requests reversal of the Examiner’s decision.

Claim Group II (5, 14, 28, and 37)

The claims of this claim group call for the inclusion of payment information within order information. Thus, the order and the payment information are received together. The Examiner acknowledges that Matsuda does not disclose this concept, but argues that Camaisa discloses the inclusion of payment information within order information. Thus, the Examiner has rejected the claims of this claim group under 35 U.S.C. § 103 over Matsuda in view of Camaisa. MPEP 706.02 states that “35 U.S.C. § 103 authorizes a rejection where to meet the claim, it is necessary to modify a single reference or to combine it with one or more others.” However, there are two fundamental conditions precedent to a proper modification or combination. First, the Examiner must somehow account for all of the elements of the rejected claims [*In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988)]. Second, the Examiner must be correct when asserting that given elements and limitations in the claims correspond to a particular aspect or aspects of one or more of the cited references. In the case of the claims of this group, the Examiner has failed to establish the second condition precedent because the Examiner is simply incorrect in asserting that certain elements and limitations of the rejected claims correspond to a particular aspect or aspects of the Matsuda-Camaisa combination.

The Examiner relies on the abstract and Figures 6-15 of Camaisa as support for his assertion. Review of Camaisa, however, shows that Camaisa does not disclose the inclusion of payment information within order information, but rather shows how a bill can be included in menu information. The distinction between a bill and payment is well known. A bill is a statement of what is/will be owed, whereas a payment is satisfaction of that which is owed. This distinction is born out by Camaisa itself (see abstract, line 13, “pay the bill”). While line 13 of the abstract of Camaisa does discuss payment, there is no discussion of inclusion of payment information within the order, and review of Figures 6-15 of Camaisa shows no provision for inclusion of payment within an order (please see particularly Figure 15).

Appellant, therefore, respectfully submits that the claims of Claim Group II are not fairly held obvious under 35 U.S.C. § 103(a) over Matsuda in view of Camaisa. Appellant respectfully requests reversal of the Examiner's decision.

Claim Group III (6, 10, 15, 19, 29, 33, 38, and 42)

The claims of this group call for inclusion of vehicle identification information within the order information. The Examiner asserts that this aspect of the rejected claims is disclosed by Matsuda. As stated above, a condition precedent to a proper 35 U.S.C. § 103 rejection is a correct assertion that given elements and limitations in the claims correspond to a particular aspect or aspects of one or more of the cited references. In the case of the claims of this group, the Examiner is again simply incorrect in asserting that certain elements and limitations of the rejected claims correspond to a particular aspect or aspects of the Matsuda reference. The term "vehicle," when used in the context of Appellant's application, means a vehicle for carrying passengers. The Examiner cites several passages of Matsuda in support of his rejection. None of these passages, however, pertain to a vehicle as that term is used in Appellant's application.

Appellant, therefore, respectfully submits that the claims of Claim Group III are not fairly held obvious under 35 U.S.C. § 103(a) over Matsuda. Appellant respectfully requests reversal of the Examiner's decision.

Claim Group IV (7, 8, 16, 17, 30, 31, 39, and 40)

The claims of this group call for validation of order information. The Examiner asserts that this aspect of the rejected claims is disclosed by Matsuda. Again, a prerequisite to a proper 35 U.S.C. § 103 is correctness regarding correspondence between given elements and limitations in the claims and a particular aspect or aspects of one or more of the cited references. In the case of the claims of this group, the Examiner is incorrect in asserting that certain elements and limitations of the rejected claims correspond to a particular aspect or aspects of the Matsuda reference. The term

“validation,” when used in the context of Appellant’s application, is an inquiry into whether an order is correct. This may mean, for example, a check of whether provided credit card information is valid. The Examiner cites column 14, lines 5-33 of Matsuda in support of his rejection. The cited passage, however, pertains to the determination of whether a Matsuda video terminal is positioned in an unreceivable area (see line 27). While this determination may be important to the Matsuda mechanism, Appellant is unsure how it can fairly be said to relate to validation of order information.

Appellant, therefore, respectfully submits that the claims of Claim Group IV are not fairly held obvious under 35 U.S.C. § 103(a) over Matsuda. Appellant respectfully requests reversal of the Examiner’s decision.

Claim 23

Claim 23 calls for receipt of aural order information. The Examiner acknowledges that this aspect of Appellant’s invention is not disclosed by Matsuda, but asserts that it is taught by Camaisa. In support of this assertion, the Examiner cites column 8, lines 8-15 of Camaisa. Review of this section of Camaisa, however, clearly shows that the Camaisa authors are describing receipt of “audio” information (see lines 9-12) about “available menu topics.” Audio information about available menu topics is quite different from aural order information.

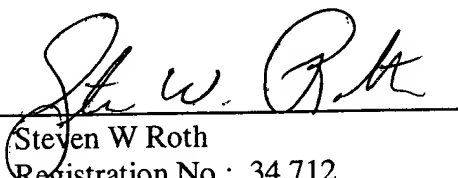
Appellant, therefore, respectfully submits that claim 23 is not fairly held obvious under 35 U.S.C. § 103(a) over Matsuda in view of Camaisa. Appellant respectfully requests reversal of the Examiner’s decision.

9. Summary

For each of the foregoing reasons, it is submitted that the Examiner's rejections of claims 1-46 and 48-52 were erroneous, and reversal of his decision is respectfully requested.

Respectfully submitted,

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Appendix A (Claims)

- 1 1. A method for servicing a customer, said method comprising the steps of:
2
3 transmitting information about available items as a first wireless transmission;
4 retransmitting said information about said available items as a second wireless
5 transmission; and
6 receiving order information from at least one customer device, said customer
7 device being moved by a customer from a first position to a second position, wherein said
8 first position is not within range of said first wireless transmission and wherein said
9 second position is within range of said second wireless transmission, said information
10 being received after said customer device is moved to said second position, said
11 information not being received as a result of a request from said customer device.
- 1 2. The method of claim 1 wherein said information about available items is a menu.
2
- 1 3. The method of claim 1 including the step of displaying said information about
2 available items.
- 1 4. The method of claim 1 wherein said order information includes user selection
2 information regarding said available items.
- 1 5. The method of claim 1 wherein said order information includes payment
2 information.
- 1 6. The method of claim 1 wherein said order information includes vehicle
2 identification information.

1 7. The method of claim 1 further including the steps of:

2 validating said order information;

3 accepting said order information when said order information is valid; and

4 rejecting said order information when said order information is not valid.

1 8. The method of claim 7 further including the steps of:

2 transmitting acceptance information to said client device when said order is valid;

3 and

4 transmitting error information to said client device when said order is not valid.

1 9. The method of claim 1 including the step of displaying said order information.

1 10. The method of claim 6 including the step of displaying said vehicle identification
2 information.

1 11. A method for servicing a customer, said method comprising the steps of:
2 transmitting a menu as a first wireless transmission;
3 retransmitting said menu as a second wireless transmission; and
4 displaying said menu via a customer device, said customer device being moved
5 by a customer from a first position to a second position, wherein said first position is not
6 within range of said first wireless transmission and wherein said second position is within
7 range of said second wireless transmission, said menu being displayed after said
8 customer device is moved to said second position, said menu not being displayed as the
9 result of a request from said customer device; and
10 receiving order information from said customer device.

1 12. The method of claim 11 wherein said menu is repeatedly transmitted.

1 13. The method of claim 11 wherein said order information includes user selection
2 information regarding said available items.

1 14. The method of claim 11 wherein said order information includes payment
2 information.

1 15. The method of claim 11 wherein said order information includes vehicle
2 identification information.

1 16. The method of claim 11 further including the steps of:
2 validating said order information;

3 accepting said order information when said order information is valid; and

4 rejecting said order information when said order information is not valid.

1 17. The method of claim 16 further including the steps of:

2 transmitting acceptance information to said client device when said order is valid;

3 and

4 transmitting error information to said client device when said order is not valid.

1 18. The method of claim 11 including the step of displaying said order information.

1 19. The method of claim 15 including the step of displaying said vehicle

2 identification information.

1 20. A method for servicing a customer, said method comprising the steps of:

2 transmitting information about available items as a first wireless transmission;

3 retransmitting said information about available items as a second wireless

4 transmission; and

5 displaying said information about available items via a customer device, said

6 customer device being moved by a customer from a first position to a second position,

7 wherein said first position is not within range of said first wireless transmission and

8 wherein said second position is within range of said second wireless transmission, said

9 information about available items being displayed after said customer device is moved to

10 said second position, said information items not being displayed as the result of a request

11 from said customer device.

1 21. The method of claim 20 wherein said information about available items is a menu.

1 22. The method of claim 20 further including the step of receiving order information
2 from said customer device.

1 23. The method of claim 20 further including the step of receiving aural order
2 information from an order station.

1 24. A program product, said program product comprising:

2 signal bearing media; and

3 one or more programs stored on said signal bearing media, said one or more
4 programs being configured to perform the following steps:

5 transmitting information about available items as a first wireless
6 transmission;

7 retransmitting said information about available items as a second wireless
8 transmission; and

9 receiving order information from at least one customer device, said
10 customer device being moved by a customer from a first position to a second position,
11 wherein said first position is not within range of said first wireless transmission and
12 wherein said second position is within range of said second wireless transmission, said
13 order information being received after said customer device is moved to said second
14 position, said order information not being received as the result of a request by said
15 customer device.

1 25. The program product of claim 24 wherein said information about available items
2 is a menu.

1 26. The program product of claim 24 wherein said one or more programs are further
2 configured to perform the step of displaying said information about available items.

1 27. The program product of claim 24 wherein said order information includes user
2 selection information regarding said available items.

1 28. The program product of claim 24 wherein said order information includes
2 payment information.

1 29. The program product of claim 24 wherein said order information includes vehicle
2 identification information.

1 30. The program product of claim 24 wherein said one or more programs are further
2 configured to perform the steps of:

3 validating said order information;

4 accepting said order information when said order information is valid; and

5 rejecting said order information when said order information is not valid.

1 31. The program product of claim 30 wherein said one or more programs are further
2 configured to perform the steps of:

3 transmitting acceptance information to said client device when said order is valid;

4 and

5 transmitting error information to said client device when said order is not valid.

1 32. The program product of claim 24 wherein said one or more programs are further
2 configured to perform the step of displaying said order information.

1 33. The program product of claim 29 wherein said one or more programs are further
2 configured to perform the step of displaying said vehicle identification information.

1 34. A program product for servicing a customer, said program product comprising:

2 signal bearing media; and

3 one or more programs disposed on said signal bearing media, said one or more
4 programs being configured to perform the steps of:

5 transmitting a menu as a first wireless transmission;

6 transmitting said menu as a second wireless transmission;

7 displaying said menu via a customer device, said customer device being
8 moved by a customer from a first position to a second position, wherein said first position
9 is not within range of said first wireless transmission and wherein said second position is
10 within range of said second wireless transmission, said menu being displayed after said
11 customer device is moved to said second position, said menu not being displayed as the
12 result of a request from said customer device; and

13 receiving order information from said customer device.

1 35. The program product of claim 34 wherein said menu is repeatedly transmitted.

1 36. The program product of claim 34 wherein said order information includes user
2 selection information regarding said available items.

1 37. The program product of claim 34 wherein said order information includes
2 payment information.

1 38. The program product of claim 34 wherein said order information includes vehicle
2 identification information.

1 39. The program product of claim 34 wherein said one or more programs are further
2 configured to perform the steps of:

3 validating said order information;

4 accepting said order information when said order information is valid; and

5 rejecting said order information when said order information is not valid.

1 40. The program product of claim 34 wherein said one or more programs are further
2 configured to perform the steps of:

3 transmitting acceptance information to said client device when said order is valid;

4 and

5 transmitting error information to said client device when said order is not valid.

1 41. The program product of claim 34 wherein said one or more programs are further
2 configured to perform the steps of displaying said order information.

1 42. The program product of claim 38 wherein said one or more programs are further
2 configured to perform the steps of displaying said vehicle identification information.

1 43. A program product for servicing a customer, said program product comprising:

2 signal bearing media; and

3 one or more programs disposed on said signal bearing media, said programs being
4 configured to perform the steps of:

5 transmitting information about available items as a first wireless
6 transmission;

7 retransmitting said information about available items as a second wireless
8 transmission; and

9 displaying said information about available items via a customer device,
10 said customer device being moved by a customer from a first position to a second
11 position, wherein said first position is not within range of said first wireless transmission
12 and wherein said second position is within range of said second wireless transmission,
13 said information about available items being received after said customer device is
14 moved to said second position, said information not being received as the result of a
15 request from said customer device.

1 44. The program product of claim 43 wherein said information about available items
2 is a menu.

1 45. The program product of claim 43 wherein said one or more programs are further
2 configured to perform the step of receiving order information from said customer device.

1 46. An apparatus for servicing a customer, said apparatus comprising:

2 a processor;

3 memory connected to said processor; and

4 a mechanism for repeatedly transmitting information about available items via a
5 wireless transmission, said wireless transmission being received by a customer device
6 that is moved from an out of range location to a location that is within range of said
7 wireless transmission by a user and wherein said information about available items is
8 thereupon displayed without having been requested by said customer device.

1 48. The apparatus of claim 46 wherein said information about available items is a
2 menu.

1 49. The apparatus of claim 46 further including a mechanism for receiving order
2 information from said customer device.

1 50. A customer device, said customer device comprising:

2 a processor;

3 memory connected to said processor;

4 a mechanism for receiving a repeatedly transmitted wireless transmission
5 regarding information about available items, said transmission being received when said
6 customer device is moved from an out of range location to a location that is within range
7 of said transmission by a customer, said transmission not being received as the result of a
8 request from said customer device;

9 a mechanism for displaying said information; and

10 a mechanism for transmitting order information, said order information being
11 based upon said information about available items.

1 51. An apparatus for servicing a customer, said apparatus comprising:

2 a processor;

3 memory connected to said processor;

4 a mechanism for repeatedly transmitting a menu via a wireless transmission
5 wherein said wireless transmission is designed to be received by a customer device; and

6 a mechanism for receiving order information from said customer device, said
7 order information being generated based upon said menu.

1 52. A customer device, said customer device comprising:

2 a processor;

3 memory connected to said processor;

4 a mechanism for receiving a repeatedly transmitted wireless transmission
5 regarding a menu, said transmission being received when in range of said transmission,
6 but not when outside of said range of said transmission and not as the result of a request
7 for said menu;

8 a mechanism for displaying said menu; and

9 a mechanism for transmitting order information, said order information being based upon
10 said information about available items.

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MECHANISM

Assistant Commissioner for Patents
Washington, DC 20231

APPEAL BRIEF IN SUPPORT OF APPEAL

FROM THE PRIMARY EXAMINER TO THE BOARD OF APPEALS

Sir:

Applicant(s) herewith submit an appeal brief, in triplicate, in support of the appeal to the Board of Appeals from the decision dated May 8, 2002, of the Primary Examiner finally rejecting claims 1-46 and 48-52.

The appeal brief fee of \$320.00 is:

☐

Enclosed.

☐

Not required. (Fee paid in prior appeal.)

☒

Charged to Deposit Account No. **09-0465**. A duplicate copy of this sheet is enclosed.

Docket No.: RO998-238L

Serial No.: 09/238,821

Oral Hearing is:



Not requested.



Requested. See first paragraph of accompanying
appeal brief.

Date: November 7, 2002

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November 7, 2002

Date of Deposit

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